IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

CRP.No. 205 OF 1995()

L.6 - SM.3/1984 OF TALUK LAND BOARD, KUNNATHUNAD

REVN. PETITIONERS:

1. VISWANATHAN, SON OF PRABHAKARAN NAIR, KUTTIKAT HOUSE, ASHAMANOOR VILLAGE, KUNNATHUNAD TALUK.

2. SMT. SANTHA, D/O.. PRABHAKARAN NAIR, KUTTIKAT HOUSE, ASHAMANOOR VILLAGE, KUNNATHUNAD TALUK.

3. GEETHA, D/O.. PRABHAKARAN NAIR, DO.DO.

4. VIJAYAMMA, D/O. PRABHAKARAN NAIR, DO. DO.DO

5. SAROJINI AMMA, W/O. PRABHAKARAN NAIR, DO.DO.

BY ADV. SRI.K.N.NARAYANA PILLAI
SRI.T.K.VENUGOPALAN

RESPONDENTS:

1. THE CHAIRMAN, TALUK LAND BORAD, KUNNATHUNAD & DEPUTY COLLECTOR (L.R.), ERNAKULAM.

2. STATE OF KERALA.

3. THE TAHSILDAR, KUNNATHUNAD.

4. KESAVAN NAMBOOTHIRI, S/O. VAMANAN NAMBOOTHIRI, KARAKKAT ILLOM, ASAMANOOR VILLAGE, KUNNATHUNAD TALUK.

R1 TO R3 BY GOVERNMENT PLEADER
SRI. RAVEENDRA BABU.

R4 BY ADVOCATE SRI.R.RAMADAS

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P. NO. 205/1995

ORDER ON CMP NO. 321/1995 IN C.R.P. 205/1995

// DISMISSED //

15TH FEBRUARY, 2007. **SD/-**
P.R. RAMAN, JUDGE.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN, J.

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C.R.P. NO. 205 OF 1995

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DATED THIS, THE 15TH DAY OF FEBRUARY, 2007

O R D E R

This revision is against the order of the Taluk Land Board in L.6-SM3/84/KND dated 10.2.1994. Petitioners herein are tenants under the land holder against whom a land ceiling proceeding was pending before the Taluk Land Board. An extent of 1 Acre 44 cents of land in Survey No. 262/9 and 257/1A (8) (old) of Asamannoor Village was also offered to be surrendered by the land holder towards excess land.

2. Petitioners filed an application to re-open the case under Section 85(8) of the Kerala Land Reforms Act along with a petition for condonation of delay of nearly five years. In support of the petition for condonation of delay, it was urged that a civil suit was pending as O.S. 198/1988 before the Munsiff's Court, Perumbavoor , which was eventually closed on 20.3.1993 and hence the period during which the matter was pending before the civil court is liable to be excluded.

By the impugned order, the Land Tribunal found that the suit was of the year 1988 and from the copy of the order in I.A.977/1993 it can be seen that

the case was disposed of on 20.3.1993 on the request of the petitioners to abandon the suit. It was also found that the 5th defendant in the said case had raised a contention in the written statement that the proper remedy of the petitioners is to seek recourse to the provisions contained in Section 85 (8) of the Land Reforms Act. Despite such contention being raised, petitioners did not choose to file any application earlier. Even the final order passed by the civil court as referred to in the impugned order would show that the suit was dismissed as the petitioners abandoned the same. A copy of the order in I.A. 977/1993 was also made available to me by the learned Government Pleader which also shows that the interlocutory application was one filed under Order 23 Rule 1 of the Code of Civil Procedure seeking permission to abandon the suit with permission to institute a fresh suit. It was also stated in the order that the present petition was filed on the date on which the case was taken for trial in the special list and the withdrawal sought for was only to prejudice the defendant. Hence the liberty sought for to file a fresh suit was rejected and the suit was dismissed as withdrawn. It is also seen from the said order that the 5th defendant had, on 10.11.1989 filed a written statement wherein a contention was raised that the remedy available to the petitioners herein (plaintiffs in the suit) was to proceed under the Kerala Land Reforms Act. Therefore, the

finding of the Land Board that despite the written statement of the 5th defendant as early as on 10.11.1989 the petitioners did not choose to withdraw the suit but continued the same until I.A. 997/1993 was filed which was allowed and suit permitted to be withdrawn only on 20.3.1993. Therefore, whether the period between the date of filing of the written statement by the 5th defendant until the suit was eventually dismissed as withdrawn is liable to be excluded for computing the period of limitation arises for consideration.

3. It is true that if the petitioners were bona fide prosecuting the matter they were certainly entitled to exclude the said period. But from the conduct of the petitioners in abandoning the suit, without anything more, it cannot be said that they were bona fide prosecuting the matter. It was then contended by the learned counsel appearing for the revision petitioners that here is a case where the purchase certificate was issued in their favour by the competent authority under the Kerala Land Reforms Act. The extent covered by the purchase certificate was also excluded even in the draft statement. But according to him, there is a mistake in the extent mentioned in the order. They are not claiming anything more than the land purchased as falling within the boundaries mentioned there and if there was any mistake in the extent of the land made mention of in the order, that shall not

prejudicially affect the right of the petitioners to seek exclusion of the remaining land having an extent of 1 Acre and 44 cents. On a perusal of the purchase certificate, the certificate of purchase was granted in respect of land in Sy. No.262/10, 261/11 and 262/12 whereas the claim in respect of 1.44 Acres now sought to be excluded is shown as in Sy. No. 262/9 and 267/1A(8). In these circumstances, it cannot be said that the Land Board committed an error or any illegality in dismissing the application for condonation of delay of more than five years. But according to the petitioners, no prejudice will be caused to the State by considering the matter on merits to see whether the actual extent of tenancy is 3.49 Acres or 4.93 acres within the specific boundaries as shown in the purchase certificate and the filing of the suit was due to mistaken advise givPen, which may not affect the parties.

4. Heard all the parties.

5. In the facts and circumstances, even though the explanation offered for condoning the delay is not satisfactory, to meet the ends of justice, the delay could be condoned on terms, so that the matter could be disposed of on merits after considering the contention of the petitioner. In the above view of the matter, the order passed by the Land Board refusing to condone the delay is set aside on condition that petitioners shall pay an

amount of Rs. 5,000/- (five thousand) to the respondent State within one month from today. In case of default, this order will stand automatically cancelled and the order passed by the Taluk Land Board will stand confirmed. The said amount shall be paid to the respondent through the Office of the Advocate General and that Office shall issue a receipt for the said amount which along with the judgment shall be produced by the petitioners before the Taluk Land Board. I make it clear that the merits of the contention raised in the Section 85(8) petition is left open without expressing any opinion.

Issue emergent copy.

P.R. RAMAN,
JUDGE.

knc/-

P.R. RAMAN, J.
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C.R.P. 205/1995
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O R D E R

15TH FEBRUARY, 2007.